IRVIN D. PARKER
ADMINISTRATOR

The State of South Carolina
Department of Consumer Affairs

600 COLUMBIA BUILDING
P. O. BOX 11739
COLUMBIA, S. C. 29211
(803) 758-2040

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Administrative Interpretation No. 1.202(7)-7602

"ORIGINATION FEE" IN ADDITION TO MAXIMUM INTEREST IS AN EXCESS CHARGE.

A direct consumer loan made by a bank is subject to all of the provisions of the Consumer Protection Code which apply to "consumer loans" [Section 3.104]. But the Code does not specify rates and charges for loans except by reference to or incorporation of Title 8, South Carolina Code of Laws, relating to money and interest, [Section 1.202(7)]. Elsewhere, the Code provides that a bank may not collect "a charge in excess of that allowed by law" [Section 5.202(3)]; or "permitted by law" [Section 6.113].

There is no provision in Title 8 or elsewhere which authorizes a bank to charge an "origination fee" in connection with a consumer loan.

It could be argued, I suppose, that a charge which is not specifically prohibited is "allowed" or "permitted". Restated, that argument is that absence of express authorization is implied authorization. Such a construction would effectively nullify the usury statute since it would permit a lender to charge the maximum "interest" and then add <u>any amount</u> of "fees" and "charges" as long as it is not labeled "interest". Such would be an absurdity.

One of the basic maxims of legislative interpretation is that a statute may be construed so as to attribute an absurdity to the Legislature only where no other reasonable interpretation suggests itself. In this case one might reasonably conclude that the Legislature, in limiting "interest", intended to limit all charges contracted for or received, which are charges for the use of money or for forbearance of a debt. Restated in the language of the Consumer Protection Code and the Federal Truth in Lending Act, it intended to limit "all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit...." [Section 3.109]. This interpretation is supported by Section 8.798(a) of the Consumer Finance Act, [Act 988 of 1966]

wherein the Legislature expressed the matter thusly:

> No person shall engage in the business of lending... and contract for, exact or receive directly or indirectly, or in connection with any such loan, any charges, whether for interest, compensation, consideration or expense which in the aggregate are greater than the interst rate permitted by the general usury statute.... (Emphasis added)

The Consumer Finance Act, of course, does not apply to banks. The legislative history of the quoted language reveals, however, that the Legislature was not dealing here with providing a more favorable general usury statute for banks than for other lenders lending under those statutes. On the contrary, it was expressing what it intended to limit by the general usury statutes when it used the term "interest".

It is the opinion of the Department that an "origination fee" in a consumer loan transaction, is included in the term interest and in the absence of express authorization of such a charge by the Legislature, such would be treated by the Department as "a charge in excess of that allowed by law" [Section 5.202(3)] or "permitted by law" [Section 6.113] if when added to the "interest" the aggregate charge exceeds the appropriate interest rate ceiling.

Irvin D. Parker
Administrator